IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No.2898 of 2006

Dr Pranab Biswas and Anr. ..Petitioners.

Vs

The Mun Corpn of Gr Mumbai and Ors ..Respondents

Mr J. Reis with Mr.N.P. Pandit i/b M/s Hemant Sethi & Co
for the petitioners

Ms Savla for the Municipal Corporation

CORAM: SWATANTER KUMAR,C.J.,&
S.R.SATHE, J.

DATE: APRIL 2, 2007.

P.C.:-

1. This is a petition under Article 226 of the Constitution of India where the petitioners have prayed the following reliefs:

> "a) This Hon`ble Court be pleased to cal for the records of the petitioners case and after examining the legality thereof this Hon`ble court be pleased to grant a writ of certiorari or any other writ in the nature of certiorari quashing the ultravires illegal and arbitrary action with the construction of the toilet block on the vacant land of the petitioners to the

north west of the petitioners clubhouse situated on the Shivaji Park Maidan as shown in the plan annexed at Exh A to the petition.

b) This Hon`ble court be pleased to grant a writ of mandamus or any other writ order direction on the nature of mandamus directing the respondents their servants, officers agents and servants to demolish the toilet/sanitary block being constructed by the respondents on the vacant land of the petitioners as shown in the plan annexed at Exh to the petition.

c) That pending the hearing and final disposal of the petition this Hon`ble court be pleased to grant an interim injunction restraining the respondents, their officers,agents and servants and or any persons claiming through the respondents from carrying out and or continuing with any further construction work of and or completion of the toilet block/ sanitary block and or from starting the said

block and or throwing it open to public and the respondents be directed to maintain complete status quo in respect of the structure so constructed till now on the vacant land of the petitioners to the north west of the petitioners clubhouse situate on Shivaji Park Maidan as shown in the plan annexed at Exh A to the petition.

d) for interim and ad-interim relief in terms of prayer clause © above.

e) for costs.

f) for such further and other reliefs as this Hon`ble Court may deem fit and the circumstances of the case may require."

2. The above claim was pressed upon the premises that the premises that is the entire stadium admeasuring about 26,000 sq yards was let out to the petitioners by the respondents, which they have been enjoying for number of years. However, in recent past the Municipal Corporation of Greater Mumbai has started raising construction for public utility services of international standard, and a such without following the due

process of law and contrary to the consent of the petitioners and thus the entire action of the respondents was discriminatory and arbitrary.

3. According to the respondents, who filed their short affidavit, they had constructed on their own in an area which was not covered and belonging to the petitioners. They have further stated that the construction has already been raised and it is not possible to shift or demolish the same as it has been done at the existing site and the Corporation further wishes to grant contract to third party (at various places) for maintenance of public convenience and they shall be open for 24 hours a day.

4. During the course of hearing the learned counsel for the parties commonly consented and we must notice quite fairly, that this petition would be disposed of by passing the following directions:

a) Mr. S.G. Kursurkar, Architect is appointed as Court Commissioner who shall visit the site in the presence of the parties and would demarcate the land of the petitioners stated to

have been leased out by virtue of a lease deed which fact is not disputed by the Corporation;

b) In the event the area where the toilets in question have been constructed fall on the land of the petitioners, petitioners would be at liberty to move an application to the Commissioner of the Corporation, who shall,with the assistance of the State Officer, fix compensation payable to the petitioners for the use and occupation of the land covered under the toilets in question. The petitioners would be at liberty to challenge the said order in accordance with law, if adverse to their interest

c) In the event the land does not fall in their leased land to the petitioners, then no cause of action survives and the toilets constructed by the Corporation can be given on contract basis as per their policy decision.

d) The fees of the Court Commissioner, quantified at Rs.5000/- shall be paid by the parties in equal share.

e) The Court Commissioner need not give notice to the parties and the visit shall be conducted by him on 16.4.2007 at 5.p.m. Even if none of the parties is present, the Commissioner shall be entitled to proceed in accordance with the law.

Writ petition is disposed of with the above directions leaving the parties to bear their own costs.

CHIEF JUSTICE

S.R.SATHE,J.